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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6615 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANIBHAI VITTAHLBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6615 of 2003

MR NK MAJMUDAR for Petitioner No. 1-3

Mr. KD Pandya, AGP for Respondent No. 1-2

MR NILESH A PANDYA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/07/2004

ORAL JUDGEMENT

Rule. Mr. KD Pandya, learned AGP waives service of Rule on behalf of respondents No. 1 and 2 and learned advocate Shri NA Pandya waives service of Rule on behalf of respondent No.3. With the consent of parties, the matter is taken up for final hearing today.

2. On Town Planning Scheme No. 18 (Manjalpura area, Vadodara) being finalised the petitioners are allotted final plot No. 132 along with other final plots. The said scheme has become final in the year 1992. The original plot being final plot No. 362 which was occupied by the petitioners was reserved for garden purpose. The petitioners have in the present Special Civil Application have prayed to hand voer final plot No. 362 (originally owned by them) as the appropriate authority has failed to hand over vacant and peaceful possession of final plot No. 362 admeasuring 2150 sq.mtrs. of land though there is lapse of more than 10 years, which came to be allotted to them under the town planning scheme. Originally the petitioners have also prayed for an appropriate writ, direction or order directing the respondent authorities to hand over vacant and peaceful possession of final plot No. 132 admeasuring 2150 sq.mtrs. to the petitioners. Today, when the matter is called out, Shri NK Majmudar, learned advocate appearing for the petitioner states that he is not pressing for prayer in terms of paragraph 7(b) and restricts the prayer in terms of prayer 7(c) with regard to handing over of vacant and peaceful possession of final plot No. 132 admeasuring 2150 sq.mtrs. No reply is filed to the present Special Civil Application by the appropriate authority. The State Government has filed the reply. Shri NA Pandya, learned advocate appearing on behalf of Vadodara Municipal Corporation states that during pendency of civil suit being Regular Civil Suit No. 692 of 1991 and Civil Misc. Appeal No. 1/93 the petitioners were not handed over peaceful and vacant possession of the land in question. The fact remains that the town planning scheme having become final the petitioners are not handed over the peaceful and vacant possession of final plot No. 132. It is the bounden duty of the appropriate authority to implement the town planning scheme which has become final and to hand over the vacant and peaceful possession of the final plots to the persons who are allotted the lands, even if there is encroachment. In view of the judgment of the Hon'ble Supreme Court of India, reported in AIR 1972 S.C. Page 793 the appropriate authority is required to implement the scheme and hand over vacant and peaceful possession of the plots as per T.P. Scheme. In the present case, as stated hereinabove though the town planning scheme has become final in the year 1992 whereby the petitioner was allotted final plot No. 132 qua original plot the petitioner is not handed over the possession of the plot in question. Accordingly, the respondents are directed to implement the Town Planning Scheme No. 18 which has

become final and hand over vacant and peaceful possession of final plot No. 132 to the petitioner, considering the directions issued by the trial Court in Regular Civil Suit No. 692 of 1991. Such an exercise is required to be done within a period of six weeks from the date of receipt of this order. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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